



PATENT
ATTORNEY DOCKET NO.: KCX-1235(19508)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application:)	
Roberto Carlos Perez et al.)	Examiner: Kidwell, Michele M.
)	
Serial No.: 10/696,181)	Group Art Unit: 3761
)	
Filed: October 29, 2003)	Dep. Acct. No.: 04-1403
)	
Title: Cover Layer for An Absorbent Article)	Conf. No.: 6535

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Dear Sir:

In conjunction with the filing of a Notice of Appeal, Applicants respectfully request review of the basis of rejections of the pending claims.

Currently, claims 27-41, including independent claim 27, are pending in the present application. By way of example, independent claim 27 provides for an absorbent article comprising a cover layer. The cover layer comprises a user contacting surface and a non-contacting surface, wherein the cover layer has indicia formed thereon. The cover layer defines one or more apertures having an opening that tapers in a direction extending away from the user contacting surface towards the non-contacting surface. The article includes a bottom layer and an absorbent layer disposed between the cover layer and the bottom layer.

In the Final Office Action of February 12, 2007, Claims 27-41 were rejected under 35 U.S.C. § 103(a) as being un-patentable over U.S. Patent No. 5,431,643 to Quellette et al. in view of U.S. Patent No. 4,846,813 to Raley. In contrast to independent claim 27, Quellette et al. does not describe tapered apertures in its fluid pervious cover layer. On the other hand, Raley indicates tapered passageways in an otherwise impervious cover layer.

Using the present application in hindsight, the Final Office Action asserts that “it would have been obvious to modify the apertures of Quellette to provide apertures with tapered openings because apertures with tapered openings will allow for more effective acceptance and retention of liquids as taught by Raley in the abstract.” Office Action at p. 3.

I. The Abstract of Raley does not disclose or otherwise teach that tapered openings allow for “more effective acceptance and retention of liquids.”

The Abstract of Raley uses a topsheet of fluid impervious material having a plurality of tapered passages. The apertures allow for the flow of fluid from the otherwise fluid impervious topsheet to the absorbent web. Expansion of the web then seals off the tapered passages. However, there is nothing in the Abstract of Raley that indicates that tapering the passage in the cover layer improves “acceptance” or “retention” of liquids as compared to non-tapered apertures.¹ Instead, the Abstract

¹ Raley’s Abstract states: “A fluid absorbent article, comprising an absorbent web expandable upon fluid absorption and joined to a topsheet of fluid impervious material having a plurality of tapered passages therein, each open at its respective base and apex, and oriented with its base in the plane of the topsheet and its apex disposed in an interior portion of said absorbent web, such that fluid contacting the topsheet, surface tensionally enters the tapered passages at the bases thereof for passage therethrough to exit at the apexes thereof into the absorbent web, whereupon expansion of the absorbent web in proximity to the tapered passages compressively affects closure thereof to sealingly retain the fluid in the absorbent web. Such article is applicable to a method of absorbing fluids in a corporeal environment, comprising the step of contacting the topsheet with the fluid, surface tensionally flowing the

indicates only that expansion of the absorbent web seals off the passage ways so as to “sealingly retain the fluid.” This does not teach or suggest tapering the passage ways, and it is respectfully submitted that the motivation cited in the Final Office Action simply does not otherwise appear in Raley’s abstract.

II. One of ordinary skill in the art would not otherwise be motivated by Raley to modify the fluid pervious top sheet of Quellette et al. to provide tapered openings.

Even assuming Raley taught “more effective acceptance and retention of liquids”, such would provide no motivation or suggestion to modify Quellette et al. because Quellette et al. already uses a fluid pervious topsheet. As such, Quellette et al. does not need apertures (much less tapered apertures) to pass the fluid to the absorbent core or to increase “acceptance and retention.” More specifically, even assuming Raley provides “more effective acceptance and retention of liquids” by using tapered apertures (which Raley does not teach – as discussed above), such a modification would be unnecessary and of no consequence for Quellette et al. because of its fluid pervious topsheet. As such, there simply is no motivation or suggestion to modify Quellette et al. as set forth in the Office Action because a problem of “effective acceptance and retention of liquids” is not shown to exist with the fluid pervious topsheet of Quellette et al. As such, the Final Office Action improperly relies only upon the hindsight teachings of the present application to make this modification.

fluid into the absorbent web through the tapered passages, and expanding the web to compressively close the tapered passages and sealingly retain fluid in the absorbent web.”

III. Contrary to the Advisory Action, the rejected claims do not contain any “recitation of the intended use limitations.”

The Advisory Action of May 8, 2007 states:

In response to applicant’s argument that Faley [sic] does not teach that tapered openings allow for more effective acceptance and retention of liquids, the applicant is reminded that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Independent claim 27 does not contain a “recitation of intended use” limitation.

In fact, the language “more effective acceptance and retention of liquids” does not appear in pending claims 27-41 or the Abstract of Raley. Instead, the language comes from the reasons for rejection in the Final Office Action of February 12, 2007. In addition, the Final Office Action does not identify “prior art structure” for performing the “intended use” because no such intended use is recited in the claims.

IV. Contrary to the Advisory Action, that a modification of a reference “may” be undertaken is not a legal standard for patentability.

The Advisory Action of May 8, 2007 states:

[T]he examiner does not rely on Raley for apertures, Raley is provided to support the teaching that the apertures already provided by Quelette may be tapered as discussed in the Final Rejection.

As already discussed above, the Final Office Action and Advisory action each fail to identify a proper suggestion, motivation, or teaching for modifying the apertures of Quelette. In addition, whether the apertures of Quelette “may be tapered” is an improper legal standard for patentability. A rejection under 35 U.S.C. § 103 requires a prima facie showing that the claimed invention is “obvious” in view of the prior art – not just a showing that it is possible to construct the invention.

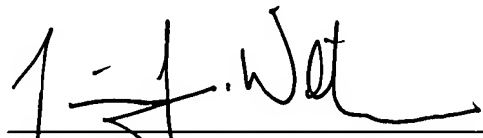
Applicants also assert that, for at least the same reasons, dependent claims 28-41 also patentably define over the cited references. The patentability of the dependent claims, however, certainly does not hinge on the patentability of independent claim 27. In particular, some or all of the dependent claims may possess features that are independently patentable, regardless of the patentability of claim 27.

It is believed that the present application is in complete condition for allowance and favorable action, therefore, is respectfully requested. Please telephone the undersigned, however, should any issues remain after consideration of this request for review.

Please charge any additional fees required by this Amendment to Deposit Account No. 04-1403.

Respectfully requested,

DORITY & MANNING, P.A.

A handwritten signature in black ink, appearing to read "Tim F. Williams", written over a horizontal line.

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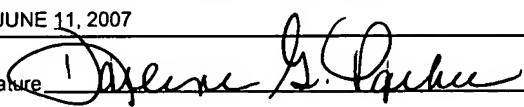
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PTO/SB/33 (07-05)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) KCX-1235 (19508)	
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		First Named Inventor Roberto Carlos Perez	
		Art Unit 3761	Examiner Michele M. Kidwell
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>47,178</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <p><input type="checkbox"/> *Total of _____ forms are submitted.</p>			


Signature

TIM F. WILLIAMS

Typed or printed name

864-271-1592

Telephone number

6/11/2007

Date

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